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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,637	02/27/2004	Jeffrey Lynn Chamberlain		7226

7590
Charles R. Sutton
8990 E. Flapjack Rd.
Prescott Valley, AZ 86314

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

MAIL DATE	DELIVERY MODE
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04/26/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/788,637

Applicant(s)

CHAMBERLAIN, JEFFREY LYNN

Examiner

Kimberly S. Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 7-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species, Species I directed to Figure 7 and Species II directed to Figure 9. The species are independent or distinct because the mechanism for dispensing fluid functions in a mechanically different manner. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, or a single grouping of patentably indistinct species, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 1 is generic.

There is a search and/or examination burden for the patentably distinct species as set forth above because at least the following reason(s) apply:

The search for species I would require a different text query search than that of Species II.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or a grouping of patentably indistinct species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species or grouping of patentably indistinct species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species or grouping of patentably indistinct species.

Should applicant traverse on the ground that the species, or groupings of patentably indistinct species from which election is required, are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing them to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

2. During a telephone conversation with Charles Sutton on April 20, 2011 a provisional election was made without traverse to prosecute the invention of Species II, claims 1-6 and 15-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

3. The drawings are objected to because Figure 1 shows modified forms of construction in the same view. It is suggested the cross sectional view of Figure 1 be detailed with a separate figure number and referenced in the specification as being the section view taken along the line 1-1 of Figure 1
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the attachment means must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear, given the specification, as to how the valves are nipple-like structures? It appears from Figure 4 that the outer layer and subsequent reservoir are the nipple-like structure on which the valves are mounted.
7. Regarding claims 6 and 20, the phrase "nipple like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3, 6, 15-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, US Patent 5,857,431 in view of Deshaies, US Patent 5,944,516.
10. Regarding claims 1 and 15, Peterson discloses an apparatus comprising a reservoir (@20) having a wall, a fill aperture (column 3, line 63) and valves (18), the valves having pressure actuated opening means (reference Figures 3 and 4), the valves under pressure allowing liquid to

exit the reservoir, the valves when not under pressure denying egress from the reservoir and wherein the valves are slits deformable by pressure. However, Peterson does not disclose the aperture having a closable openable cap. Deshaies teaches within the same field of endeavor the use of a fill aperture having a closable openable cap (22, Figure 2). It would have been obvious to one having ordinary skill in the art at the time of the invention to use the fill aperture as taught by Deshaies as the fill aperture of Peterson as these were known functional equivalents in the art for filling an internal chamber with a substance and such modification would function in a known and predictable manner.

11. Regarding claims 2 and 16, Peterson further discloses an outer layer enclosing the wall having an aesthetic design (column 2, lines 1-8).

12. Regarding claims 3 and 17, Peterson in view of Deshaies discloses the invention substantially as claimed but does not positively disclose the use of indicia. It would have been a matter of obvious design choice to one having ordinary skill in the art at the time of the invention to apply indicia to the device since the applicant has not stated that the indicia is for any particular purpose or solves a stated problem not obvious to one having skill in the art and the invention would function equally as well absent the indicia.

13. Regarding claim 6, Peterson in view of Deshaies discloses the valves are nipple like structures (as illustrated in the embodiment shown in Figure 8, #214).

14. Regarding claim 20, Peterson in view of Deshaies discloses that the reservoir has a nipple like structure (as illustrated in Figure 8), the nipple like structure extending from the wall and the valves (216) being located on said nipple like structure (column 4, lines 33-39 of Peterson).

15. Claims 4 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, US Patent 5,857,431 in view of Deshaies, US Patent 5,944,516 as applied to claim 1, above and further in view of Hass, US Patent 5,961,406.

16. Peterson in view of Deshaies discloses the invention substantially as claimed. However, Peterson in view of Deshaies does not disclose the use of a cord attached to the apparatus. Hass teaches within the same field of endeavor the use of a cord attached to an animal apparatus as a means for holding the device without having to contact the wet device after the animal has chewed on it. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a cord to the device of Peterson in view of Deshaies as taught by Hass in order to enable the owner to carry the device without having to contact the chewed portion of the device.

17. Regarding claim 18, as the cord of Hass is attached to the apparatus, it thereby inherently has an attachment means being attached to the apparatus.

18. Claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, US Patent 5,857,431 in view of Deshaies, US Patent 5,944,51 as applied to claim 1, above and further in view of Huettner et al., US Patent 6,092,489 (Huettner).

19. Peterson in view of Deshaies discloses the device substantially as claimed. However, Peterson in view of Deshaies does not disclose the use of a noisemaker. Huettner teaches within the same field of endeavor the use of a noisemaker within a reservoir for exciting the animal. It would have been obvious to one having ordinary skill in the art at the time the invention was

made to apply the noisemaker as taught by Huettner to the device of Peterson in view of Deshaies in order to excite the dog and thereby entice the animal in the use of the device.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note documents listed on attached Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is (571)272-6909. The examiner can normally be reached on Monday-Thursday 10:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Collins can be reached on 571-272-6886. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly S Smith/
Primary Examiner, Art Unit 3644

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